MOTION FILED

MAR 26 1976

NO. 75-1026

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

EUGENE WILSON TYLER, Petitioner,

v.

TRAMMELL E. VICKERY, ET AL., Respondents

RALPH BANKS, JR., Petitioner

v.

TRAMMELL E. VICKERY, ET. AL., Respondents

JAMES E. C. PERRY, ET AL., Petitioners

v.

EDWARD S. SELL, JR., ET AL., Respondents

MOTION OF ATLANTA LEGAL AID SOCIETY, INC. FOR LEAVE TO APPEAR AS AMICUS CURIAE AND BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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OF COUNSEL:

Jacqueline D. Bennett

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The Atlanta Legal Aid Society, Inc. is a non-profit organization chartered under Georgia law to serve the civil legal needs of the poor in the five-county metropolitan Atlanta area. As will appear below, movant has a strong interest in reversal of the opinions below. Since movant adopts the petitioners' statement of the merits, its position in support of a grant of certiorari is nearly identical to its reasons for wishing to appear as amicus curiae. Therefore, movant has combined in this one documents its Motion for Leave to Appear and its Brief in Support of the Petition for Certiorari.

As a publicly-supported corporation and as an organization devoted to legal representation of the poor, the Society is firmly committed to the principle of equal employment opportunity. During 1975, an Affirmative Action Committee was constituted, with representatives of the Society's lawyer and non-lawyer staff, and of the Atlanta private

bar. The Committee has recommended that the Society's hiring of lawyers during the next three years substantially increase the percentage of black professionals.

Everyone concerned is agreed that the Society's black legal staffing currently falls well short of any realistic goal. Of thirty lawyers and law graduates currently working for the Society, only four are black.

A crucial problem for the Society in both its recruitment and its retention of black bar members has been the Georgia bar exam. The impersonal statistics of the failure rate of blacks on this exam are bitingly real for the Society. Black failure to pass has hurt the Society in three separate ways:

(1) It has required that the Society actually lay off some black lawyers. Movant has a long-standing rule that any lawyer failing to pass the exam twice must leave its payroll. Blacks caught by the excessive

failure rate on the Georgia exam have simply been forced to move on.

Although the Society's rule may seem nearly as harsh as the results of the exam itself, it is rooted in strong reason. Bar membership is vital to movant's success in its daily operations, because of its high litigation caseload and the need to advise clients, negotiate and settle claims. As compared to private firms of comparable size, the Society has many fewer research and related tasks which may be delegated to non-bar members. In addition, the high turnover rate of attorneys with the Society, as with all Legal Services offices, creates a special need to hire attorneys who have passed the bar to keep current with its litigation caseload. In short, the two-failure rule is a harsh but necessary rule which the Georgia experience has shown to be particularly harsh for blacks.

(2) The Georgia failure rate has directly limited the pool of qualified blacks available for hiring. The Society departed from its usual practice this year by hiring new staff in January rather than June, with a special commitment to hire black bar members. Because of the direct effects of the bar exam failure rate, the number of qualified black applicants was severely limited.

(3) The Georgia failure rate has also had its indirect effects. Although these are more difficult to document, black law graduates have clearly been deterred from Georgia law practice precisely because of the discouraging failure rate on the bar exam. Indeed, when the Society's recruiters engaged in their annual national recruitment efforts in the Fall of 1973, immediately after the results of the Bar examination in question were published, numerous black interviewees at leading law schools specifically referred to the bar exam "problem" as a

consideration against accepting a job offer in Georgia. When the Atlanta legal market is serving as a powerful magnet for lawyers generally to take the Georgia bar exam, it is alarming to movant that many blacks seem to be repelled rather than attracted.

Movant's experience has shown that fair and equitable testing measures are equally important for lawyers as they are for other prospective employees. As the petition for certiorari shows, the test adopted by the courts below for judging the fairness of the Georgia bar exam conflicts with tests established by this Court and other courts of appeals. Movant therefore respectfully moves for leave to appear as amicus curiae, for the limited purpose of filing this its brief in support of the petition for a writ of certiorari.

ROBERT N. DOKSON

DAVID A. WEBSTER

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel of record in the foregoing matter with a copy of this Motion of Atlanta Legal Aid Society, Inc. for Leave to Appear as Amicus Curiae and Brief in Support of Petition for Writ of Certiorari by depositing a copy of same in the United States Mail addressed as follows:

Arthur K. Bolton, Attorney General
Timothy J. Sweeney, Assistant
Attorney General
Attorney General's Office
State Judicial Building
Atlanta, Georgia 30334

and

Neil Bradley, Esquire
ACLU Foundation, Inc.
52 Fairlie Street, N.W., Suite 355
Atlanta, Georgia 30303

This the ___ day of March, 1976.

ROBERT N. DOKSON

Supreme Court, U. S.
FILED
APR 22 1976
MICHAEL RODAK, JR., CLERK

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This is to amend the Motion of Atlanta Legal Aid Society, Inc. for Leave to Appear as Amicus Curiae and Brief in Support of Petition for Writ of Certiorari. Specifically, Movant wishes to amend its pronouncement that "movant adopts the petitioners' statement of the merits." Movant contemplated supporting only the first of petitioners' contentions, namely that the Georgia bar examination has a resulting adverse or disparate effect as to black applicants.

Movant knows of no information and has no knowledge outside the record, which would support any inference of intentional discrimination by the Board of Bar Examiners or any individual member thereof. Movant has nothing but praise for the long hours of service that the Board members devote to this work, and the other sacrifices they must make in order to serve.

We hope that when this litigation ends and whatever device emerges to measure the fitness of bar applicants to practice law (a concept which we believe necessary for the protection of the public and the legal profession) - be it the current examination, a new professionally developed and tested examination, or some other professionally developed and tested screening and/or review system - the Georgia Supreme Court will continue to attract bar examiners of the same high quality of those who are now serving and have recently served in that capacity.

ROBERT N. DOKSON

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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel of record in the foregoing matter with a copy of this Amendment to Motion of Atlanta Legal Aid Society, Inc. for Leave to Appear as Amicus Curiae and Brief in Support of Petition for Writ of Certiorari by depositing a copy of same in the United States Mail addressed as follows:

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52 Fairlie Street, N.W., Suite 355
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This the ____ day of April, 1976.

ROBERT N. DOKSON